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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 DANIEL M. HOAG, a single person,

10 Plaintiff,

11 v.

12 CITY OF QUINCY, QUINCY POLICE
13 DEPARTMENT, OFFICER THOMAS
14 CLARK,

15 Defendants.
16

NO. 2:14-cv-0363-SAB

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

17 Before the Court is Defendants' Motion for Summary Judgment, ECF No. 9,
18 and Plaintiff's Motion to Certify Questions of State Law to Washington Supreme
19 Court. ECF No. 15. The motions were heard without oral argument.

20 ***Facts***

21 On September 20, 2012, Officer Thomas Clark, an officer with the City of
22 Quincy Police Department, pulled over a semi-truck driven by Daniel M. Hoag for
23 going ten miles above the speed limit. Officer Clark asked Hoag for his license,
24 registration, medical card, and log book. Hoag provided all the requested
25 documents except the log book, claiming Officer Clark did not have the right to
26 look at it. Hoag told Officer Clark that only a state trooper or an individual
27 certified by the Federal Motor Carrier Safety Administration could request the log
28 book. Officer Clark returned to his vehicle and checked if any state patrol

**ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT # 1**

1 inspection officers were available to assist him. No inspection officers were
2 available, but an officer informed Officer Clark that Officer Clark did have
3 authority to request the log book and a statute was provided.

4 Officer Clark returned to the truck and saw Hoag writing in his log book.
5 The officer opened the truck door and again demanded the log book. Officer Clark
6 then took Hoag into custody for obstruction of a law enforcement officer. Hoag
7 was issued a criminal citation for obstruction and two infractions—one for
8 speeding and one for a log book violation—and then released from the patrol car.
9 All three charges were eventually dismissed. Hoag filed suit in the Superior Court
10 for the State of Washington in Grant County alleging violations of his Fourth
11 Amendment rights under 42 U.S.C. § 1983, as well as claims under the
12 Washington state constitution. Defendants removed the case to this Court, where
13 they filed a motion for summary judgment. ECF No. 9. Plaintiff responded and
14 also filed a motion to certify questions of state law to the Washington Supreme
15 Court. ECF No. 15.

16 *Motion Standard*

17 Summary judgment is appropriate if the “pleadings, depositions, answers to
18 interrogatories, and admissions on file, together with the affidavits, if any, show
19 that there is no genuine issue as to any material fact and that the moving party is
20 entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
21 323 (1986) (citing Fed. R. Civ. P. 56(c)). There is no genuine issue for trial unless
22 there is sufficient evidence favoring the nonmoving party for a jury to return a
23 verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
24 (1986). The moving party has the burden of showing the absence of a genuine
25 issue of fact for trial. *Celotex*, 477 U.S. at 325.

26 In addition to showing that there are no questions of material fact, the
27 moving party must show that it is entitled to judgment as a matter of law. *Smith v.*
28 *Univ. of Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party

1 is entitled to judgment as a matter of law if the non-moving party has failed to
2 make a sufficient showing on an essential element of a claim on which the non-
3 moving party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving
4 party cannot rely on conclusory allegations alone to create an issue of material
5 fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

6 When considering a motion for summary judgment, a court may neither
7 weigh the evidence nor assess credibility; instead, “[t]he evidence of the non-
8 movant is to be believed, and all justifiable inferences are to be drawn in his
9 favor.” *Anderson*, 477 U.S. at 255.

10 *Analysis*

11 Although Hoag’s complaint is multifaceted, the pertinent questions are
12 whether Officer Clark violated Hoag’s Fourth Amendment rights, and similar state
13 constitutional rights, by demanding and then seizing Hoag’s log book, and
14 whether the City of Quincy can be liable for any alleged constitutional violations
15 based on Officer Clark’s conduct. Defendants contend that Officer Clark had legal
16 authority to request Hoag’s log book, that even if he did not, he is entitled to
17 qualified immunity, and that because no constitutional violation occurred, the city
18 cannot be held liable.

19 Qualified immunity protects government officials “from liability for civil
20 damages insofar as their conduct does not violate clearly established statutory or
21 constitutional rights of which a reasonable person would have known.” *Harlow v.*
22 *Fitzgerald*, 457 U.S. 800, 818 (1982). This doctrine balances two important
23 government interests “the need to hold public officials accountable when they
24 exercise power irresponsibly and the need to shield officials from harassment,
25 distraction, and liability when they perform their duties reasonably.” *Pearson v.*
26 *Callahan*, 555 U.S. 223, 231 (2009).

27 A court must answer two questions to determine whether an officer is
28 entitled to qualified immunity: (1) “whether the facts that a plaintiff has

1 alleged . . . make out a violation of a constitutional right,” and (2) “whether the
2 right at issue was clearly established at the time of defendant’s alleged
3 misconduct.” *Id.* at 232. In order to “best facilitate the fair and efficient disposition
4 of each case,” a trial court has discretion as to which order to address the two
5 prongs. *Id.* at 242.

6 In this case, the Court will first analyze the “clearly established” prong and
7 finds the right at issue was not clearly established at the time of Officer Clark’s
8 alleged misconduct. Hoag’s principle argument is that, under Washington state
9 law, the state patrol “shall” perform inspections of commercial motor vehicles.
10 RCW 46.32.010(4). In turn, these inspections include, among other things,
11 inspection of “hours of service,” or log books. RCW 46.32.010(1). Under this
12 reading, the state patrol and only the state patrol may request a commercial
13 driver’s log books. Hoag argues that because Officer Clark was not authorized by
14 RCW 46.32.010 to inspect his log book, Officer Clark violated Hoag’s privacy
15 rights under the Fourth Amendment of the United States Constitution and Article
16 I, § 7 of the Washington State Constitution. Without deciding whether Officer
17 Clark’s actions violated Hoag’s constitutional rights, the Court finds that whatever
18 constitutional privacy right Hoag may have in his log book was not clearly
19 established.

20 While Hoag’s interpretation of RCW 46.32.010 is not an unreasonable one,
21 it is hardly clear that it is the correct interpretation or that it is clearly established.
22 First, as Hoag’s Motion to Certify Question of State Law concedes, “counsel has
23 been unable to find any Washington cases interpreting RCW 46.32.010.” ECF No.
24 15. Likewise, this Court has been unable to locate any federal or state case law
25 interpreting the statute. Second, although Hoag’s reading of the statute relies on
26 one common cannon of statutory interpretation—*expressio unius est exclusion*
27 *alterius* (the expression of one thing is the exclusion of another)—this
28 interpretation would lead to other implausible outcomes. Hoag’s contention is that

1 because state patrol officers “shall” be the ones conducting inspections of
2 commercial vehicles, other law enforcement officers shall not conduct inspections.
3 Applying the same mode of interpretation to the same statute, local law
4 enforcement officers would be unable to inspect the driver’s qualification or
5 driver’s license of any person operating a commercial motor vehicle, school bus,
6 or private carrier bus—a dubious interpretation at best. Third, even if the statute
7 gives the state patrol the sole authority to conduct inspections it does not
8 necessarily follow that Officer Clark violated Hoag’s rights secured to him by
9 either the Washington State Constitution or the United States Constitution.
10 Finally, Officer Clark consulted a state trooper to seek to confirm his authority to
11 request the log book. Regardless of whether he received accurate information or
12 not, Officer Clark could not be said to have been “plainly incompetent” or to have
13 “knowingly violate[d] the law,” even when viewing the evidence in the light most
14 favorable to Hoag. *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (internal citation
15 omitted).

16 Viewing the evidence in the light most favorable to Hoag, it appears Officer
17 Clark may have acted very poorly and may have exceeded his lawful authority.
18 That alone, however, is not enough to overcome qualified immunity. Without
19 deciding whether Officer Clark had legal authority to request Hoag’s law book and
20 to detain Hoag after he refused to produce it, the Court finds Officer Clark is
21 entitled to qualified immunity because the right at issue was not clearly established
22 at the time.

23 Hoag also brings claims against the City of Quincy for the same acts under
24 agency and respondeat superior doctrines. A municipality “[cannot be] liable
25 under § 1983 based on the common-law tort theory of respondeat superior.”
26 *Castro v. City of Los Angeles*, 797 F.3d 654, 670 (9th Cir. 2015). A municipality,
27 such as the City of Quincy, is only responsible if its employee was acting pursuant
28 to an official policy, a custom, or an act by an individual with policy-making

1 authority which is tantamount to a policy. *See Monell v. Dep't of Soc. Servs. of*
2 *City of New York*, 436 U.S. 658, 694-95 (1978). Hoag does not allege any official
3 policies, customs, or acts by any individual with policy-making authority. At most,
4 Hoag's pleadings could be inferred to allege a failure-to-train claim against the
5 City for failing to instruct Officer Clark on his duties vis-à-vis the inspection of
6 log books. Although a municipality may be held liable under § 1983 for failure-to-
7 train, culpability under this theory is "most tenuous." *Connick v. Thompson*, 563
8 U.S. 51, 61 (2011). The failure-to-train at issue "must amount to the deliberate
9 indifference to the rights of persons with whom the untrained employees came into
10 contact." *Id. citing Canton*, 489 U.S. at 388. In turn, deliberate indifference
11 requires proof that a municipal actor disregarded a known or obvious
12 consequence. *Connick*, 563 U.S. at 61. Hoag presents no evidence and no
13 developed legal argument as to how any failure by the city led to the alleged
14 constitutional violation. No reasonable juror could find the city liable for Officer
15 Clark's actions.

16 Viewing the evidence in the light most favorable to Hoag, the Court finds
17 Officer Clark is entitled to qualified immunity because the alleged right at issue
18 was not clearly established. Additionally, the Court finds the City of Quincy
19 cannot be held liable under a *Monell* theory. Summary judgment is granted to the
20 defendants on all claims.

21 Accordingly, **IT IS HEREBY ORDERED:**

- 22 1. Defendants' Motion for Summary Judgment, ECF No. 9, is **GRANTED**.
- 23 2. Plaintiff's Motion to Certify Question of State Law, ECF No. 15, is
- 24 **DENIED**.
- 25 3. Judgment shall be entered in favor of all defendants.
- 26 4. All previously set court dates, including the trial date, are **STRICKEN**.

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**ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT # 6**

1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 enter this Order, enter judgment, provide copies to counsel and Plaintiff, and **close**
3 **the file.**

4 **DATED** this 7th day of December 2015.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

12 Stanley A. Bastian
13 United States District Judge
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